UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/48
28 January 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Agenda item 19

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SECOND SESSION

Report of Mr. D. Türk, Chairman of the Sub-Commission, at its forty-second session, prepared in accordance with paragraph 18 of Commission on Human Rights resolution 1990/64

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Introduction

1. The Commission on Human Rights at its forty-sixth session adopted resolution 1990/64 of 7 March 1990 entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", in which it reaffirmed that the Sub-Commission can best assist the Commission on Human Rights by providing it with recommendations based on the different views and perspectives of independent experts, which should be appropriately reflected in the report of the Sub-Commission as well as in the expert studies carried out under its auspices. Resolution 1990/64 reiterated a number of guidelines for the work of the Sub-Commission which had been brought to the attention of the Sub-Commission by previous resolutions of the Commission, in particular resolutions 1988/43 and 1989/36. The Commission, in its above-mentioned resolution, inter alia, invited the Sub-Commission to request its Working Group established under its decision 1989/104 to include in its deliberations an examination of ways and means to avoid any proliferation of studies as well as of draft resolutions or decisions on issues already being dealt with by the Commission; and took note of the steps taken so far by the Sub-Commission to rationalize and streamline its work and encouraged the Sub-Commission to continue this process.

2. In paragraph 18 of resolution 1990/64, the Commission requested the Chairman of the Sub-Commission to report to the Commission on the implementation of the guidelines which the Commission provided in its resolution. The present report is submitted by the Chairman of the Sub-Commission at its forty-second session to the Commission on Human Rights at its forty-seventh session pursuant to the above-mentioned request.

I. TERMS OF REFERENCES AND THE ROLE OF THE SUB-COMMISSION

3. The report of the Sub-Commission on its forty-second session which is before the Commission at its forty-second session in document E/CN.4/1991/2 - E/CN.4/Sub.2/1990/58, reflects the breadth of the subjects brought to its attention for analysis, consideration and action by the Commission, Sub-Commission members, observer States and non-governmental organizations.

4. In dealing with its items on the agenda, the Sub-Commission has borne in mind its complementary role in relation to the work of the Commission and other human rights bodies and tried to make its own contribution as a body of experts. The Sub-Commission has been pursuing many tasks in the field of prevention of discrimination, protection of vulnerable groups, the realization of economic, social and cultural rights and human rights in the administration of justice. It considered the situation of human rights in a number of countries and in the fields of contemporary forms of slavery, human rights of detainees, the right to development, the right to freedom of expression and opinion and the relationship between human rights and environment. The Sub-Commission has also considered communications under Economic and Social Council resolution 1503 (XLVIII) and brought to the notice of the Commission situations which it has reasonable cause to believe revealed a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

A. Report of the open-ended Working Group established pursuant to Sub-Commission decision 1989/104

5. By decision 1989/104, the Sub-Commission decided to establish, at the beginning of its forty-second session, a sessional working group to prepare an overview and an analysis of the suggestions and proposals which have been made in order to enable the Sub-Commission to better discharge its responsibilities in dealing with violations of human rights as discussed under item 6 of its agenda, taking also into account the functions and duties of the Commission on Human Rights in the matter. The Sub-Commission further decided to request the same sessional working group, in preparing the overview and analysis, to submit to the Sub-Commission its views and recommendations as to the possible advantages and disadvantages of the various suggestions and proposals referred to above, and to present its findings in the light of the deliberations of the Sub-Commission at its forty-second session under the agenda item relating to the question of the violations of human rights and fundamental freedoms. The Sub-Commission further instructed the Working Group to take into account the request of the Commission in paragraph 11 of resolution 1990/64. In order to facilitate the task of the Working Group, the Sub-Commission also decided to continue discussing the agenda item "Review of the work of the Sub-Commission" at its forty-second session.

6. The Working Group had before it working papers submitted by individual members of the Sub-Commission (E/CN.4/Sub.2/1989/47; E/CN.4/Sub.2/1989/51; E/CN.4/Sub.2/1989/55; E/CN.4/Sub.2/1990/56; and E/CN.4/Sub.2/1990/57), dealing with the question of improving methods of considering human rights violations and putting forward suggestions as to the organization of work.

7. The Working Group felt that many of the ideas and suggestions concerning the role of the Sub-Commission in dealing with the question of violations of human rights, which had been elaborated in the working papers before the Working Group, merited further reflection. The Working Group considered that one of the basic questions to be discussed in this regard was that relating to the preparation by the Sub-Commission, for the use of the Commission on Human Rights, of a report containing information on violations of human rights and fundamental freedoms from all available sources, as requested in paragraph 2 of Commission resolution 8 (XXIII). In this regard some members expressed serious doubts about the feasibility and the desirability of this so-called global report. They stated that there was no consensus on the matter. Other participants, however, felt that efforts should be made in this direction and that solutions may be found as regards the many questions and issues which were raised.

8. In the discussion of the subject-matter, members of the Working Group and other participants expressed different views and put forward various suggestions on this subject which were summarized by the Chairman-Rapporteur in an informal "Inventory of issues and suggestions relating to the global report of the Sub-Commission on the question of violations of human rights" and distributed to participants of the discussion. This is contained in the annex to the report of the Working Group (E/CN.4/Sub.2/1990/14).

9. The Sub-Commission adopted decision 1990/125, by which it decided that the Working Group should continue its work at the forty-third session.

B. Report of the Chairman of the forty-sixth session of the Commission on Human Rights to the Sub-Commission

10. In paragraph 17 of its resolution 1990/64, the Commission invited its Chairman to inform the Sub-Commission on the debate of its item "Report of the Sub-Commission". Pursuant to this invitation, the Chairman of the forty-sixth session of the Commission, Mrs. Quisumbing, addressed the Sub-Commission at its 25th meeting held on 24 August 1990 (see E/CN.4/Sub.2/1990/SR.25).

11. The Chairman of the forty-sixth session of the Commission felt that closer co-ordination and dialogue was needed between the Commission and the Sub-Commission in order to help identify the issues clearly and find solutions to them.

12. Commission resolution 1990/64 also reflected members' comments during the forty-sixth session on the report of the Sub-Commission; those comments had been both appreciative and critical. On the one hand, the Sub-Commission had been praised for its extremely important contribution to setting standards concerning the protection and promotion of human rights. A number of studies carried out by the special rapporteurs had been cited in that connection, including those on the administration of justice, on economic, social and cultural rights, and on the right to leave and return to any country. Other speakers had commended the Sub-Commission's working groups whose efforts had resulted in the development of various international instruments on human rights, such as the Convention on the Rights of the Child.

13. However, some members of the Commission had expressed concern about certain trends in the Sub-Commission. They felt, for example, that the Sub-Commission appeared to be interpreting its mandate in an increasingly broad way and tended to go beyond it, with consequent overloading of its agenda and duplication of the work of the Commission; also that it spent too much time on politicized debates and adopted a large number of resolutions and decisions on human rights abuse situations. Consequently, the Commission had welcomed as a positive step the Sub-Commission's decision 1989/104 to establish a sessional working group to develop ideas on the means by which the Sub-Commission could better address human rights violations.

14. The Chairman of the Commission also stated that the Sub-Commission had been criticized for instructing some of its members to prepare reports and studies not directly relevant to the protection and promotion of human rights and without the participation of all the experts. In that respect, Sub-Commission decision 1989/103 had been well received because it provided for the formulation of a medium-term programme that would ensure the participation of as many as possible of the Sub-Commission's members in those studies.

15. The Chairman of the Commission noted that the Sub-Commission had already taken some positive steps to respond to those criticisms but there was no doubt that, given the growing sensitivity of public opinion in every corner of the world, the constant changes in political, economic and social conditions, and the emergence of new needs, the Commission and Sub-Commission must engage in serious analysis and study to address the new developments in the area of human rights.

16. While, however, the United Nations bodies dealing with human rights were thus called upon to make additional efforts, their resources were, alas, constantly shrinking. The Commission and Sub-Commission must therefore work hand in hand to remedy that situation and respond to the expectations of the international community by establishing closer co-ordination and continuous dialogue. For example, joint meetings of the officers of the Commission and of the Sub-Commission could be held, a working group composed of members of the two bodies could be set up, and the chairmen of the Commission and Sub-Commission could meet every year.

17. The members of the Sub-Commission through their Chairman, expressed their appreciation and thanks to the Chairman of the Commission for her perceptive comments, which would most certainly be very useful to the Sub-Commission. The Sub-Commission had not failed to take note of the critical comments made by the Commission because it was the only way to correct any errors and work more effectively. Mrs. Quisumbing was absolutely right in saying that the work of the Sub-Commission must be considered within the context of the growing demands which were made on it and which faced all human rights bodies alike with the obligation to find appropriate solutions. It was also true that the Commission and Sub-Commission must work together to that end, for only thus could they contribute more effectively to the protection of human rights. The Sub-Commission was aware of the extent of the challenges that it must face, but firmly believed that it could meet them. The Sub-Commission was also fully aware of the unique opportunity it at present had to communicate directly with the Commission and of the desirability of pursuing that dialogue in order to give real substance to the idea of a productive and effective association between the Commission and the Sub-Commission.

18. Further to Mrs. Quisumbing's statement to the Sub-Commission, the Bureau of the Sub-Commission met with her and had an extensive exchange of views on the mutual and complementary work of the Commission and the Sub-Commission in the promotion and protection of human rights.

C. Review of the work of the Sub-Commission

19. At its forty-second session, under agenda item 3 "Review of the work of the Sub-Commission", members raised the following issues as to the function and the role of the Sub-Commission (see E/CN.4/Sub.2/1990/SR.2,3,4 and 6):

(a) During the debate of this item, the view was expressed that international developments in various parts of the world would necessarily have an influence on the work of the Sub-Commission. The Sub-Commission should take into account in its future work that the field of human rights was entering into a new era and that the structures and long-standing features which characterized international politics had changed and new factors had appeared. Others uttered the opinion that with the end of ideological confrontations, the international climate had certainly become calmer, but respect for civil and political as well as economic, social and cultural rights was far from being secured everywhere. Throughout the world there were massive and frequent violations of human rights with which the Sub-Commission had to continue to concern itself even if the Commission was also taking an interest in them. The Sub-Commission must reflect on all the obstacles that still impeded the exercise and enjoyment of human rights and fundamental freedoms. In that context, a few members stated that the Sub-Commission should take care not to politicize its work and to devote too much time to

considering the situation in certain countries, since that was the province of the Commission. It should rather concentrate its efforts on examining reports and studies and working out human rights standards;

(b) As to the rationalization and organization of the work of the Sub-Commission, there was a general feeling among the members that careful consideration should be given to the comments which the Commission had made. Its agenda was overburdened and many improvements could be made in the work of the Sub-Commission. In this regard, the proposal was made that the Sub-Commission could group the items on its agenda in six main clusters and arrange to study some of them on an annual basis and others on a biennial basis. In particular, more time should be allocated to the consideration of studies and reports. Others said that, admittedly everything was not perfect, but although a certain rationalization of the Sub-Commission's work could be envisaged, there should be no intention of restricting the mandate of a body which, by its activity, had helped the United Nations system move in the right direction. As to the criticism made by the Commission of the Sub-Commission, members stated that the Commission seemed to ignore the mandates it had itself given to the Sub-Commission, and the Sub-Commission's broader approach was thus in conformity with the instructions of the bodies to which it was responsible. On the other hand, it was said, guidance and practical advice by the Commission on the Sub-Commission's work could help avoid interpreting its mandate too broadly and tending to go beyond it. The Commission had started considering ways of rationalizing its own working methods and the Sub-Commission might usefully take account of any decisions made in that respect;

(c) During the debate on the work of the Sub-Commission, some members underlined the necessity that the Sub-Commission should be allowed to consider immediately urgent questions referring to human rights situations. It should be recalled that there was no consensus on this subject. There were members of the Sub-Commission who strongly held the view that the Sub-Commission had a duty to proceed immediately to consideration of such events which might occur at the very time when the Sub-Commission was in session, since the mandate of the Sub-Commission was to concern itself with a situation to the extent that violations of human rights might be involved. Others, however, disagreed on the issue, stating that consideration should be given only to issues which were directly concerned with human rights. Problems of an essentially political nature should be avoided, as the Sub-Commission might not be fully informed about them although it might sometimes be necessary for it to pronounce on urgent questions from the point of view of human rights. An agenda item under which it would be possible to consider an issue at any time would risk relegating activities coming within the Sub-Commission's mandates to a position of secondary importance. Furthermore, the time allocated to the Sub-Commission might not be sufficient to allow careful consideration of all aspects of a question and of all the information, which might even have important political implications, received from all the parties concerned.

20. There was general agreement among the members of the Sub-Commission that consideration of the various aspects of its work should continue.

II. METHODS OF WORK

21. Noting the steps taken so far by the Sub-Commission to rationalize and streamline its work, the Commission encouraged the Sub-Commission to continue this process.

22. In organizing the work of its forty-second session, the Sub-Commission was guided by the Commission's recommendations and encouraged by its appreciation of the results achieved at the fortieth and forty-first sessions. Every effort was made to rationalize the consideration of the agenda items and to arrive at increased efficiency and reasonable methods of work. As mentioned above, the Sub-Commission began consideration of ways and means of streamlining its consideration of issues relating to violations of human rights and will continue to do so at its forty-third session (decision 1990/125).

23. Taking into account that the Sub-Commission is a useful forum for the contributions of non-governmental organizations in the field of human rights, the Chairman of the Sub-Commission wishes to express his gratitude to the non-governmental organizations for their increasing contributions to the work of the Sub-Commission providing it with information on all subjects on its agenda. The Chairman would also like to thank United Nations Member States for their growing interest in the activities of the body. Observers from 96 States and 105 non-governmental organizations participated in the forty-second session of the Sub-Commission. It should be mentioned, however, that these positive and appreciated aspects give the Sub-Commission additional difficulties in organizing its work which will require in the future even more careful rationalization so that meetings of the Sub-Commission can be organized in the most efficient way. The Chairman appreciates the efforts made thus far by some Geneva-based non-governmental organizations in that regard, and hopes that the rights and duties of non-governmental organizations in their relationship with the functional commissions of the Economic and Social Council as set out in Economic and Social Council resolution 1296 (XLIV) are fully taken into account.

24. The Sub-Commission recalled the legal opinion of 23 June 1989 by the Office of the Legal Counsel on rule 69 (2) of the Rules of Procedure of the Functional Commissions of the Economic and Social Council, that a State which was the subject of a draft resolution before the Sub-Commission should be allowed, if it so desired, to participate in the Sub-Commission's deliberations on the draft resolution prior to the beginning of voting on the draft. The Chairman would clearly indicate when the procedure of voting had begun.

25. Furthermore, the Sub-Commission took note of a statement by the Office of Legal Affairs of the United Nations concerning an inquiry made by the Sub-Commission, at its forty-first session as to whether, in the light of its decision to suspend rule 59 of the rules of procedure in order to adopt certain decisions by secret ballot, the right of explanation of vote under rule 60 was in effect non-exercisable, because it would run counter to the very principle of a secret ballot. Since that issue was not specifically addressed in the Rules of Procedure of the Functional Commissions of the Economic and Social Council, the Office of Legal Affairs had, according to practice, referred to the rules of procedure of the General Assembly, rule 88 of which provided that "... the President may permit members to explain their votes, either before or after the voting, except when the vote is taken by secret ballot ..." It was clear from that provision that the element of secrecy pertaining to a vote by secret ballot had to be maintained. Accordingly, the Office of Legal Affairs advised that the suspension of rule 59 for the purpose of taking certain decisions by secret ballot ruled out the application of rule 60 of the rules of procedure regarding explanations of vote.

26. In the context of decisions 1990/105 and 1990/111, regarding suspension of rule 59 of the Rules of Procedure to allow for voting by secret ballot at the forty-second session of the Sub-Commission, it should be recalled that a great deal of controversy preceded the adoption of these decisions. Decision 1990/105 was adopted by 17 to 3, with 4 abstentions, and 1990/111 by 18 to 3, with 4 abstentions. In the understanding that the Sub-Commission could not go on constantly suspending rule 59, it adopted resolution 1990/4 which is before the Commission on Human Rights for approval (see draft resolution II, chapter I, section A, report of the Sub-Commission E/CN.4/1991/2 - E/CN.4/1990/59).

27. Finally, the attention of the Commission on Human Rights may be drawn to decision 1990/122, by which the Sub-Commission decided, without a vote, that draft decisions and resolutions should not be introduced by one of the sponsors, and urged members not to make general comments on the drafts, but offer only concrete proposals on the texts.

III. RESOLUTIONS AND DECISIONS

28. The Commission invited the Sub-Commission to give due consideration to draft resolutions proposed for adoption and to seek the widest possible measure of agreement on them, bearing in mind that such resolutions should be proposed only on such subjects as had been thoroughly discussed in the Sub-Commission or in its working groups and should be consistent with the role of the Sub-Commission or its working groups and the role of the Sub-Commission as a body of independent experts. Further, the Commission urged the Sub-Commission when examining items which are extensively discussed elsewhere in the United Nations system, to concentrate attention on those specific human rights issues on which it can make a distinctive contribution.

29. In the drafting of resolutions, decisions or any other proposals, members of the Sub-Commission have endeavoured to find the widest possible agreement on them before tabling them. As reflected in the Sub-Commission's report, 50 resolutions and decisions out of 60 were adopted without a vote, which tends to illustrate the efforts made by the Sub-Commission to work in harmony and in a most constructive manner to carry out its tasks.

30. In this regard chapter II, sections A and B, of the report of the Sub-Commission contains 34 resolutions and 26 decisions adopted at its forty-second session. The attention of the Commission may be drawn especially to chapter I, sections A and B respectively, containing seven draft resolutions and three draft decisions recommended by the Sub-Commission for adoption by the Commission. Section C of the same chapter refers to 12 resolutions and 10 decisions referring to matters which are drawn to the Commission's attention and which require consideration or action by the Commission.